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EXTENDING NONDISCRIMINATORY TREATMENT TO THE PRODUCTS OF THE MONGOLIAN PEOPLE'S REPUBLIC

COMMUNICATION

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A COPY OF A PROCLAMATION THAT EXTENDS NONDISCRIMINATORY TREATMENT TO THE PRODUCTS OF THE MONGOLIAN PEOPLE'S REPUBLIC; ALSO ENCLOSED IS THE TEXT OF THE AGREEMENT ON TRADE RELATIONS BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE MONGOLIAN PEOPLE'S REPUBLIC, PURSUANT TO 19 U.S.C. 2437(a)

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JUNE 25, 1991.—Referred to the Committee on Ways and Means and ordered to be printed

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THE WHITE HOUSE,
Washington, DC, June 24, 1991.

Hon. THOMAS S. FOLEY,
Speaker of the House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: In accordance with section 407 of the Trade Act of 1974 (Public Law 93–618, January 3, 1975; 88 Stat. 1978), as amended (the "Trade Act"), I am transmitting a copy of a proclamation that extends nondiscriminatory treatment to the products of the Mongolian People's Republic. I also enclose the text of the "Agreement on Trade Relations Between the Government of the United States of America and the Government of the Mongolian People's Republic," including exchanges of letters that form an integral part of the Agreement, which was signed on January 23, 1991, and which is included as an annex to the proclamation.

The Agreement will provide a nondiscriminatory framework for our bilateral trade relations, and thus strengthen both economic and political relations between the United States and the Mongolian People's Republic. Conclusion of this Agreement is an important step we can take to provide greater economic benefits to both countries. It will also give further impetus to the progress we have made in our overall diplomatic relations since last year.

I believe that the Agreement is consistent with both the letter and the spirit of the Trade Act. It provides for mutual extension of nondiscriminatory tariff treatment, while seeking to ensure overall reciprocity of economic benefits. It includes safeguard arrangements to ensure that our trade with the Mongolian People's Republic will grow without causing disruption to the U.S. market and consequent injury to domestic firms or loss of jobs for American workers.

The Agreement also confirms and expands for American businesses certain basic rights in conducting commercial transactions both within the Mongolian People's Republic and with Mongolian nationals and business entities. Other provisions include those dealing with settlement of commercial disputes, financial transactions, and government commercial offices. Through this Agreement, the Mongolian People's Republic also undertakes obligations to modernize and upgrade very substantially its protection of intellectual property rights. Once fully implemented, the Mongolian intellectual property regime will be on a par with that of our principal industrialized trading partners. This Agreement will not alter U.S. law or practice with respect to the protection of intellectual property.

On January 23, 1991, I waived application of subsections (a) and (b) of section 402 of the Trade Act to the Mongolian People's Republic. I determined that this waiver will substantially promote the objectives of section 402, and, pursuant to section 402(c)(2) of the

Trade Act, notified the Congress that I have received assurances that the emigration practices of the Mongolian People's Republic will henceforth lead substantially to achievement of those objectives.

I urge that the Congress act as soon as possible to approve the "Agreement on Trade Relations Between the Government of the United States of America and the Government of the Mongolian People's Republic" and the proclamation extending nondiscriminatory treatment to products of the Mongolian People's Republic by enactment of a joint resolution, referred to in section 151 of the Trade Act.

Sincerely,

GEORGE BUSH.

AGREEMENT ON TRADE RELATIONS BETWEEN
THE UNITED STATES OF AMERICA AND
THE MONGOLIAN PEOPLE'S REPUBLIC

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BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

1. Pursuant to the authority vested in me by the Constitution and the laws of the United States, as President of the United States of America, I, acting through duly empowered representatives, entered into negotiations with representatives of the Mongolian People's Republic to conclude an agreement on trade relations between the United States of America and the Mongolian People's Republic.

2. These negotiations were conducted in accordance with the requirements of the Trade Act of 1974 (Public Law 93-618, January 3, 1975; 88 Stat. 1978), as amended (the "Trade Act").

3. As a result of these negotiations, an "Agreement on Trade Relations Between the Government of the United States of America and the Government of the Mongolian People's Republic," including exchanges of letters which form an integral part of the Agreement, the foregoing in English and Mongolian, was signed on January 23, 1991, by duly empowered representatives of the two Governments and is set forth as an annex to this proclamation.

4. This Agreement conforms to the requirements relating to bilateral commercial agreements set forth in section 405(b) of the Trade Act (19 U.S.C. 2435(b)).

5. Article XVII of the Agreement provides that the Agreement shall enter into force on the date of exchange of written notices of acceptance by the two Governments.

6. Section 405(c) of the Trade Act (19 U.S.C. 2435(c)) provides that a bilateral commercial agreement providing nondiscriminatory treatment to the products of a country heretofore denied such treatment, and a proclamation implementing such agreement, shall take effect only if approved by the Congress under the provisions of that Act.

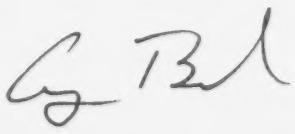
7. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States the substance of the provisions of that Act, of other acts affecting import treatment, and actions taken thereunder.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 404, 405, and 604 of the Trade Act of 1974, as amended, do proclaim that:

(1) This proclamation shall become effective, said Agreement shall enter into force, and nondiscriminatory treatment shall be extended to the products of the Mongolian People's Republic, in accordance with the terms of said Agreement, on the date of exchange of written notices of acceptance in accordance with Article XVII of said Agreement. The United States Trade Representative shall publish notice of the effective date in the Federal Register.

(2) Effective with respect to articles entered, or withdrawn from warehouse for consumption, into the customs territory of the United States on or after the date provided in paragraph (1) of this proclamation, general note 3(b) of the Harmonized Tariff Schedule of the United States, enumerating those countries whose products are subject to duty at the rates set forth in rate of duty column 2 of the tariff schedule, is modified by striking out "Mongolia".

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of June, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.



AGREEMENT ON TRADE RELATIONS BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND THE GOVERNMENT OF THE MONGOLIAN PEOPLE'S REPUBLIC

The Government of the United States of America and the Government of the Mongolian People's Republic (hereinafter referred to collectively as "Parties" and individually as "Party"),

Affirming that the evolution of market-based economic institutions and the strengthening of the private sector will aid the development of mutually beneficial trade relations,

Acknowledging that the development of trade relations and direct contact between nationals and companies of the United States and nationals and organizations of the Mongolian People's Republic will promote openness and mutual understanding,

Considering that expanded trade relations between the Parties will contribute to the general well-being of the peoples of each Party,

Recognizing that development of bilateral trade may contribute to better mutual understanding and cooperation and promote respect for internationally recognized worker rights,

Having agreed that economic ties are an important and necessary element in the strengthening of their bilateral relations,

Being convinced that an agreement on trade relations between the two Parties will best serve their mutual interests, and

Desiring to create a framework which will foster the development and expansion of commercial ties between their respective nationals, companies and organizations,

Have agreed as follows:

ARTICLE I

MOST FAVORED NATION AND NONDISCRIMINATORY TREATMENT

1. Each Party shall accord unconditionally to products originating in or exported to the territory of the other Party treatment no less favorable than that accorded to like products originating in or exported to the territory of any third country in all matters relating to:

(a) customs duties and charges of any kind imposed on or in connection with importation or exportation, including the method of levying such duties and charges;

(b) methods of payment for imports and exports, and the international transfer of such payments;

(c) rules and formalities in connection with importation and exportation, including those relating to customs clearance, transit, warehouses and transshipment;

(d) taxes and other internal charges of any kind applied directly or indirectly to imported products; and

(e) laws, regulations and requirements affecting the sale, offering for sale, purchase, transportation,

distribution, storage and use of products in the domestic market.

2. Each Party shall accord to products originating in or exported to the territory of the other Party nondiscriminatory treatment with respect to the application of quantitative restrictions and the granting of licenses.

3. Each Party shall accord to imports of products and services originating in the territory of the other Party nondiscriminatory treatment with respect to the allocation of and access to the currency needed to pay for such imports.

4. The provisions of paragraphs 1 and 2 shall not apply to:

(a) advantages accorded by either Party by virtue of such Party's full membership in a customs union or free trade area;

(b) advantages accorded to adjacent countries for the facilitation of frontier traffic;

(c) actions by either Party which are required or permitted by the General Agreement on Tariffs and Trade (the "GATT") (or by any joint action or decision of the Contracting Parties to the GATT) during such time as such Party is a Contracting Party to the GATT; and special advantages accorded by virtue of the GATT; and

(d) actions taken under Article XI (Market Disruption) of this Agreement.

5. The provisions of paragraph 2 of this Article shall not apply to Mongolian exports of textiles and textile products.

ARTICLE II

MARKET ACCESS FOR PRODUCTS AND SERVICES

1. Each Party shall administer all tariff and nontariff measures affecting trade in a manner which affords, with respect to both third country and domestic competitors, meaningful competitive opportunities for products and services of the other Party.

2. Accordingly, neither Party shall impose, directly or indirectly, on the products of the other Party imported into its territory, internal taxes or charges of any kind in excess of those applied, directly or indirectly, to like domestic products.

3. Each Party shall accord to products originating in the territory of the other Party treatment no less favorable than that accorded to like domestic products in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution, storage or use.

4. The charges and measures described in paragraphs 2 and 3 of this Article should not be applied to imported or domestic products so as to afford protection to domestic production.

5. The Parties shall ensure that technical regulations and standards are not prepared, adopted or applied with a view to creating obstacles to international trade or to protect domestic production. Furthermore, each Party shall accord products imported from the territory of the other Party treatment no less favorable than that accorded to like domestic products and to like products originating in any third country in relation to such technical regulations or standards, including conformity testing and certification.

6. The Government of the Mongolian People's Republic shall accede to the Convention Establishing the Customs Cooperation Council and the International Convention on the Harmonized Commodity Description and Coding System, and shall take all necessary measures to implement entry into force of such Conventions with respect to the Mongolian People's Republic.

ARTICLE III

GENERAL OBLIGATIONS WITH RESPECT TO TRADE

1. The Parties agree to maintain a satisfactory balance of market access opportunities, including through concessions in trade in products and services and through the satisfactory reciprocation of reductions in tariffs and nontariff barriers to trade resulting from multilateral negotiations.

2. Trade in products and services shall be effected by contracts between nationals and companies of the United States and nationals and organizations of the Mongolian People's

Republic concluded on the basis of nondiscrimination and in the exercise of their independent commercial judgment and on the basis of customary commercial considerations such as price, quality, availability, delivery, and terms of payment.

3. Neither Party shall require or encourage nationals or companies of the United States or nationals or organizations of the Mongolian People's Republic to engage in barter or countertrade transactions. Nevertheless, where nationals, companies or organizations decide to resort to barter or countertrade operations, the Parties will encourage them to furnish to each other all necessary information to facilitate the transaction.

ARTICLE IV

EXPANSION AND PROMOTION OF TRADE

1. The Parties affirm their desire to expand trade in products and services consistent with the terms of this Agreement. They shall take appropriate measures to encourage and facilitate the exchange of goods and services and to secure favorable conditions for long-term development of trade relations between their respective nationals, companies and organizations.

2. The Parties shall take appropriate measures to encourage the expansion of commercial contacts with a view to increasing trade. In this regard, the Government of the Mongolian People's Republic expects that, during the term of this Agreement, nationals and organizations of the Mongolian People's Republic

shall increase their orders in the United States for products and services, while the Government of the United States anticipates that the effect of this Agreement shall be to encourage increased purchases by nationals and companies of the United States of products and services from the Mongolian People's Republic. Toward this end, the Parties shall publicize this Agreement and ensure that it is made available to all interested parties.

3. Each Party shall encourage and facilitate the holding of trade promotional events such as fairs, exhibitions, missions and seminars in its territory and in the territory of the other Party. Similarly, each Party shall encourage and facilitate the participation of its respective nationals, companies and organizations in such events. Subject to the laws in force within their respective territories, the Parties agree to allow the import and re-export on a duty free basis of all articles for use in such events, provided that such articles are not sold or otherwise transferred.

ARTICLE V

GOVERNMENT COMMERCIAL OFFICES

Upon agreement of the Parties, each Party may establish government commercial offices as integral parts of its diplomatic mission in the territory of the other Party.

ARTICLE VI

BUSINESS FACILITATION

1. Each Party shall afford commercial representations of the other Party fair and equitable treatment with respect to the conduct of their operations.

2. Subject to its laws and procedures governing immigration, each Party shall permit the establishment within its territory of commercial representations of nationals, companies and organizations of the other Party and shall accord such representations treatment at least as favorable as that accorded to commercial representations of nationals, companies and organizations of third countries.

3. Subject to its laws and procedures governing immigration, each Party shall permit such commercial representations established in its territory to hire directly employees who are nationals of either Party or of third countries and to compensate such employees on terms and in a currency that is mutually agreed between the parties, consistent with such Party's minimum wage laws.

4. Each Party shall permit commercial representations of the other Party to import and use in accordance with normal commercial practices, office and other equipment, such as typewriters, photocopiers, computers and telefax machines in connection with the conduct of their activities in the territory of such Party.

5. Each Party shall permit, on a nondiscriminatory basis and at nondiscriminatory prices (where such prices are set or controlled by the government), commercial representations of the other Party access to and use of office space and living accommodations, whether or not designated for use by foreigners. The terms and conditions of such access and use shall in no event be on a basis less favorable than that accorded to commercial representations of nationals, companies and organizations of third countries.

6. Subject to its laws and procedures governing immigration, each Party shall permit nationals, companies and organizations of the other Party to engage agents, consultants and distributors of either Party and of third countries on prices and terms mutually agreed between the parties.

7. Subject to its immigration laws and procedures, each Party shall permit nationals, companies and organizations of the other Party to serve as agents, consultants and distributors of nationals, companies and organizations of either Party and of third countries on prices and terms mutually agreed between the parties.

8. Each Party shall permit nationals, companies and organizations of the other Party to advertise their products and services (a) through direct agreement with the advertising media, including television, radio, print and billboard, and (b) by direct mail, including the use of enclosed envelopes and cards preaddressed to that national, company or organization.

9. Each Party shall encourage direct contact, and permit direct sales, between nationals, companies and organizations of the other Party and end-users and other customers of their goods and services, and with agencies and organizations whose decisions will affect potential sales.

10. Each Party shall permit nationals, companies and organizations of the other Party to conduct market studies, either directly or by contract, within its territory. To facilitate the conduct of market research, each Party shall upon request make available non-confidential, non-proprietary information within its possession to nationals, companies and organizations of the other Party engaged in such efforts.

11. Each Party shall provide nondiscriminatory access to governmentally-provided products and services, including public utilities, to nationals, companies and organizations of the other Party in connection with the operation of their commercial representations.

12. Each Party shall permit commercial representations to stock an adequate supply of samples and replacement parts for aftersales service on a non-commercial basis.

13. Neither Party shall impose measures which unreasonably impair contractual or property rights or other interests acquired within its territory by nationals, companies and organizations of the other Party.

ARTICLE VII

TRANSPARENCY

1. Each Party shall make available publicly on a timely basis all laws and regulations related to commercial activity, including trade, investment, taxation, banking, insurance and other financial services, transport and labor. Each Party shall also make such information available in reading rooms in its own capital and in the capital of the other Party.

2. Each Party shall provide nationals, companies and organizations of the other Party with access to available non-confidential, non-proprietary data on the national economy and individual sectors, including information on foreign trade.

3. Each Party shall allow the other Party the opportunity to comment on the formulation of rules and regulations which affect the conduct of business activities.

ARTICLE VIII

FINANCIAL PROVISIONS RELATING TO TRADE IN PRODUCTS AND SERVICES

1. Unless otherwise agreed between the parties to individual transactions, all commercial transactions between nationals, companies and organizations of the Parties shall be

made in United States dollars or any other currency that may be designated from time to time by the International Monetary Fund as being a freely usable currency.

2. Neither Party shall restrict the export from its territory of convertible currencies or deposits, or instruments representative thereof, obtained in connection with trade in products and services by nationals, companies and organizations of the other Party.

3. Nationals, companies and organizations of a Party holding currency of the other Party received in an authorized manner may deposit such currency in financial institutions located in the territory of the other Party and may maintain and use such currency for local expenses.

4. Without derogation from paragraphs 2 or 3 of this Article, in connection with trade in products and services, each Party shall grant to nationals, companies and organizations of the other Party the better of most-favored-nation or national treatment with respect to:

(a) opening and maintaining accounts, in both local and foreign currency, and having access to funds deposited, in financial institutions located in the territory of the Party;

(b) payments, remittances and transfers of convertible currencies, or financial instruments representative thereof, between the territories of the two Parties, as well as

between the territory of that Party and that of any third country;

(c) rates of exchange and related matters, including access to freely usable currencies, such as through currency auctions; and

(d) the receipt and use of local currency.

ARTICLE IX

PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

1. Each Party shall provide adequate and effective protection and enforcement for patents, trademarks, copyrights, trade secrets, industrial designs and layout designs for integrated circuits. Each Party reaffirms its commitments to those international agreements relating to intellectual property to which both Parties are signatories. Specifically, each Party reaffirms the commitments made with respect to industrial property in the Paris Convention for the Protection of Industrial Property of March 29, 1883, as revised at Stockholm on July 14, 1967.

2. To provide adequate and effective protection and enforcement of intellectual property rights, each Party shall, inter alia observe the following commitments:

(a) Copyright and related rights

(i) Each Party shall adhere to the Berne Convention for the Protection of Literary and Artistic

Works (Paris 1971) ("Berne Convention"). In addition, it shall comply with the provisions set forth below.

(ii) Works protected by copyright means any original, intellectual creative work of literary or artistic character, irrespective of their value, their literary or artistic merits or their purpose, and include, inter alia, the following:

(1) all types of computer programs;

(2) collections or compilations of protected or unprotected material or data whether in print, machine readable or any other medium, including data bases, which shall be protected if they constitute intellectual creation by reason of the selection, coordination, or arrangement of their contents.

(iii) The rights protected pursuant to paragraph 2(a) this Article include, inter alia, the following:

(1) the right to import or authorize the importation into the territory of the Party of lawfully made copies of the work as well as the right to prevent the importation into the territory of the Party of copies of the work made without the authorization of the right-holder;

(2) the right to make the first public distribution of the original or each authorized

copy of a work by sale, rental, or otherwise; and

(3) the right to make a public communication of a work (e.g., to perform, display, project, exhibit, broadcast, transmit, or retransmit a work).

(iv) Each Party shall extend the protection afforded under this section to authors (as defined under the Berne Convention) of the other Party, whether they are natural persons or, where the other Party's domestic law so provides, companies and organizations, and to their successors in title.

(v) Protected rights under paragraph 2(a) of this Article shall be freely and separately exploitable and transferable.

(vi) Each Party shall confine any limitations or exceptions to the rights provided under paragraph 2(a) of this Article (including any limitations or exceptions that restrict such rights to "public" activity) to clearly and carefully defined special cases which do not impair an actual or potential market for or the value of a protected work.

(vii) If either Party has afforded no protection to works of foreign origin, it shall provide protection, consistent with this section, for all works of the other Party that are not in the public

domain in their country of origin at the time of entry into force of this Agreement in its territory.

(viii) Translation and reproduction licensing systems permitted in the Appendix to the Berne Convention:

(1) shall not be established where legitimate local needs are being met by voluntary actions of copyright holders or could be met by such action but for intervening factors outside the copyright holder's; and

(2) shall provide an effective opportunity for the copyright holder to be heard prior to the grant of any such licenses.

(ix) Any compulsory or non-voluntary license (or any restriction of exclusive rights to a right of remuneration) shall provide means to ensure payment and remittance of royalties at a level consistent with what would be negotiated on a voluntary basis.

(x) The Parties shall, at a minimum, extend to producers of sound recordings the exclusive rights to do or to authorize the following:

(1) to reproduce the recording by any means or process, in whole or in part;

(2) to exercise the importation and exclusive distribution and rental rights provided in paragraph (iii)(1) and (2) of this section.

(xi) The provisions of paragraphs iv, v, and vii of this section shall apply mutatis mutandis to the producers of sound recordings.

(xii) Paragraph viii of this section shall apply mutatis mutandis to sound recordings.

(xiii) Each Party shall:

(1) adhere to the Geneva Convention for the Protection of Producers of Phonograms and protect sound recordings first fixed or published in the territory of the other Party;

(2) protect sound recordings for a term of at least 50 years from publication;

(3) protect sound recordings published in the territory of a Party within thirty days of their publication elsewhere and recordings produced by a national, company or organization of a Party; and

(4) grant the right to make the first public distribution of the original or each authorized sound recording by sale, rental, or otherwise except that the first sale of the original or such sound recording shall not exhaust the rental or importation right therein (the "rental right" shall mean the right to authorize or prohibit the disposal of the possession of

the original or copies for direct or indirect commercial advantage).

(xiv) The acquisition and validity of intellectual property rights in sound recordings shall not be subject to any formalities, and protection shall arise automatically upon creation of the sound recording.

(b) Trademarks

(i) Protectable Subject Matter

(1) Trademarks shall consist of at least any sign, words, including personal names, designs, letters, numerals, colors, the shape of goods or of their packaging, provided that the mark is capable of distinguishing the goods or services of one national, company or organization from those of other nationals, companies or organizations.

(2) The term "trademark" shall include service marks, collective and certification marks.

(ii) Acquisition of Rights

(1) A trademark right may be acquired by registration or by use. A system for the registration of trademarks shall be provided. Use of a trademark may be required as a prerequisite for registration.

(2) Each Party shall publish each trademark either before it is registered or promptly after it is registered and shall afford other parties a reasonable opportunity to petition to cancel the registration. In addition, each Party may afford an opportunity for the other Party to oppose the registration of a trademark.

(3) The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.

(iii) Rights Conferred

(1) The owner of a registered trademark shall have exclusive rights therein. He shall be entitled to prevent all third parties not having his consent from using in commerce identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is protected, where such use would result in a likelihood of confusion.

(2) Each Party shall refuse to register or shall cancel the registration and prohibit use of a trademark likely to cause confusion with a trademark of another which is considered to be well-known. A Party may not require that

the reputation of the trademark extend beyond the sector of the public which normally deals with the relevant goods or services.

(3) The owner of a trademark shall be entitled to take action against any unauthorized use which constitutes an act of unfair competition or passing off.

(iv) Term of Protection

The registration of a trademark shall be indefinitely renewable for terms of no less than 10 years when conditions for renewal have been met. Initial registration of a trademark shall be for a term of at least 10 years.

(v) Requirement of Use

(1) If use of a registered mark is required to maintain trademark rights, the registration may be cancelled only after an uninterrupted period of at least two years of non-use, unless legitimate reasons for non-use exist. Use of the trademark with the consent of the owner shall be recognized as use of the trademark for the purpose of maintaining the registration.

(2) Legitimate reasons for non-use shall include non-use due to circumstances arising independently of the will of the trademark holder (such as import restrictions on or other

government requirements for products protected by the trademark) which constitute an obstacle to the use of the mark.

(vi) Other Requirements

The use of a trademark in commerce shall not be encumbered by special requirements, such as use which reduces the function of a trademark as an indication of source or use with another trademark.

(vii) Compulsory Licensing

Compulsory licensing of trademarks shall not be permitted.

(viii) Transfer

Trademark registrations may be transferred.

(c) Patents

(i) Patentable Subject Matter

Patents shall be granted for all inventions, whether they concern products or processes, in all fields of technology, with the exception of any invention or discovery which is useful solely in the utilization of special nuclear material or atomic energy in an atomic weapon.

(ii) Rights Conferred

(1) A patent shall confer the right to prevent others not having the patent owner's consent from making, using, or selling the subject matter of the patent. In the case of a patented

process, the patent confers the right to prevent others not having consent from using that process and from using, selling, or importing at least the product obtained directly by that process.

(2) Where the subject matter of a patent is a process for obtaining a product, each Party shall provide that the burden of establishing that an alleged infringing product was not made by the process shall be on the alleged infringer at least in one of the following situations:

(A) the product is new, or

(B) a substantial likelihood exists that the product was made by the process and the patent owner has been unable through reasonable efforts to determine the process actually used.

In gathering and evaluation of evidence to the contrary, the legitimate interests of the defendant in protecting his manufacturing and business secrets shall be taken into account.

(iii) Term of Protection

The term of protection shall be at least 20 years from the date of filing of the patent application or 17 years from the date of grant of the patent. Each Party is encouraged to extend the term of patent protection, in

appropriate cases, to compensate for delays caused by regulatory approval processes.

(iv) Transitional Protection

A Party shall provide transitional protection for products embodying subject matter deemed to be unpatentable under its patent law prior to its implementation of this Agreement, where the following conditions are satisfied:

(1) the subject matter to which the product relates will become patentable after implementation of this Agreement;

(2) a patent has been issued for the product by the other Party prior to the entry into force of this Agreement; and

(3) the product has not been marketed in the territory of the Party providing such transitional protection.

The owner of a patent for a product satisfying the conditions set forth above shall have the right to submit a copy of the patent to the Party providing transitional protection. Such Party shall limit the right to make, use, or sell the product in its territory to such owner for a term to expire with that of the patent submitted.

(v) Compulsory Licenses

Each Party may limit the patent owner's exclusive rights through compulsory licenses only to remedy an adjudicated violation of competition laws or to address, only during its existence, a declared national emergency. Where the law of a Party allows for the grant of compulsory licenses, such licenses shall be granted in a manner which minimizes distortions of trade, and the following provisions shall be respected:

(1) Compulsory licenses shall be non-exclusive and non-assignable except with that part of the enterprise or goodwill which exploits such license.

(2) The payment of remuneration to the patent owner adequate to compensate the patent owner fully for the license shall be required, except for compulsory licenses to remedy adjudicated violations of competition law.

(3) Each case involving the possible grant of a compulsory license shall be considered on its individual merits.

(4) Any compulsory license shall be revoked when the circumstances which led to its granting cease to exist, taking into account the legitimate interests of the patent owner and of the licensee. The continued existence of these circumstances shall be reviewed upon request of the patent owner.

(5) Decisions to grant or to continue compulsory licenses and the compensation provided for compulsory licenses shall be subject to review by a distinct higher authority.

(d) Layout-Designs of Semiconductor Chips

(i) Subject Matter for Protection

(1) Each Party shall provide protection for original layout-designs incorporated in a semiconductor chip, however the layout-design might be fixed or encoded.

(2) Each Party may condition protection on fixation or registration of the layout-designs. If registration is required, applicants shall be given at least two years from first commercial exploitation of the layout-design in which to apply. A Party which requires deposits of identifying material or other material related to the layout-design shall not require applicants to disclose confidential or proprietary information unless it is essential to allow identification of the layout-design.

(ii) Rights Acquired

(1) Each Party shall provide to owners of rights in integrated circuit lay-out designs of the other Party the exclusive right to do or to authorize the following:

(A) to reproduce the layout-design;

(B) to incorporate the layout-design in a semiconductor chip; and

(C) to import or distribute a semiconductor chip incorporating the layout-design and products including such chips.

(2) The conditions set out in paragraph (c)(v) of this Article shall apply, *mutatis mutandis*, to the grant of any compulsory licenses for layout-designs.

(3) Neither Party is required to extend protection to layout-designs that are commonplace in the industry at the time of their creation or to layout-designs that are exclusively dictated by the functions of the circuit to which they apply.

(4) Each Party may exempt the following from liability under its law:

(A) reproduction of a layout-design for purposes of teaching, analysis, or evaluation in the course of preparation of a layout-design that is itself original;

(B) importation and distribution of semiconductor chips, incorporating a protected layout-design, which were sold by or with the consent of the owner of the layout-design; and

(C) importation or distribution up to the point of notice of a semiconductor chip incorporating a protected layout-design and products incorporating such chips by a person who establishes that he did not know, and had no reasonable grounds to believe, that the layout-design was protected, provided that, with respect to stock on hand or purchased at the time notice is received, such person may import or distribute only such stock but is liable for a reasonable royalty on the sale of each item after notice is received.

(iii) Term of Protection

The term of protection for the lay-out design shall extend for at least ten years from the date of first commercial exploitation or the date of registration of the design, if required, whichever is earlier.

(e) Industrial Designs and Models

(i) Each Party shall provide, at a minimum, protection for industrial designs which are new, original, ornamental and non-obvious. Each Party may condition such protection on registration or other formality. The term of protection of such designs shall extend for at least ten years.

(ii) Each Party shall provide to the owner of a protected design the right to prevent others from making, copying, using, or selling that industrial design.

(iii) Neither Party shall issue compulsory licenses for industrial designs except to remedy adjudicated violations of competition law to which the conditions set out in paragraph (c)(v) of this Article shall apply, mutatis mutandis.

(f) Acts Contrary to Honest Commercial Practices and the Protection of Trade Secrets

(i) In the course of ensuring effective protection against unfair competition as provided for in Article 10 bis of the Paris Convention, each Party shall provide in its domestic law and practice the legal means for nationals, companies and organizations to prevent trade secrets from being disclosed to, acquired by, or used by others without the consent of the trade secret owner in a manner contrary to honest commercial practices insofar as such information:

(1) is not, as a body or in the precise configuration and assembly of its components, generally known or readily ascertainable;

(2) has actual or potential commercial value because it is not generally known or readily ascertainable; and

(3) has been subject to reasonable steps under the circumstances to keep it secret.

(ii) Neither Party shall limit the duration of protection for trade secrets so long as the conditions in paragraph 2(f)(i) of this Article exist.

(iii) Licensing

Neither Party shall discourage or impede voluntary licensing of trade secrets by imposing excessive or discriminatory conditions on such licenses or conditions which dilute the value of trade secrets.

(iv) Government Use

(1) A Party which requires that trade secrets be submitted to carry out governmental functions, shall not use the trade secrets for the commercial or competitive benefit of the government or of any person other than the owner of the trade secret except with the trade secret owner's consent, on payment of the reasonable value of the use, or if a reasonable period of exclusive use is given the owner of the trade secret.

(2) Each Party may disclose trade secrets to third parties, only with the trade secret owner's consent or to the degree required to carry out necessary government functions. Wherever practicable, owners of trade secrets shall be given an opportunity to enter into confidentiality agreements with any non-government entity to which the Party is disclosing trade secrets to carry out necessary government functions.

(3) Each Party may require owners of trade secrets to disclose their trade secrets to third parties to protect human health or safety or to protect the environment only when the trade secret owner is given an opportunity to enter into confidentiality agreements with any non-government entity receiving the trade secrets to prevent further disclosure or use of the trade secret.

(g) Enforcement of Intellectual Property Rights

(i) Each Party shall protect intellectual property rights covered by this Article by means of civil law, criminal law, or administrative law or a combination thereof in conformity with the provisions below. Each Party shall provide effective procedures, internally and at the border, to protect these intellectual property rights against any act of infringement, and effective remedies to stop and prevent infringements and to effectively deter further infringements. These procedures shall be applied in such a manner as to avoid the creation of obstacles to legitimate trade and provide for safeguards against abuse.

(ii) Procedures concerning the enforcement of intellectual property rights shall be fair and equitable.

(iii) Decisions on the merits of a case shall, as a general rule, be in writing and reasoned. They shall be made known at least to the parties to the dispute without undue delay.

(iv) Each Party shall provide an opportunity for judicial review of final administrative decisions on the merits of an action concerning the protection of an intellectual property right. Subject to jurisdictional provisions in national laws concerning the importance of a case, an opportunity for judicial review of the legal aspects of initial judicial decisions on the merits of a case concerning the protection of an intellectual property right shall also be provided.

(v) Remedies against a Party

Notwithstanding the other provisions of this Article, when a Party is sued for infringement of an intellectual property right as a result of the use of that right by or for the government, the Party may limit remedies against the government to payment of full compensation to the right-holder.

3. Each Party agrees to submit for enactment no later than December 31, 1992 the legislation necessary to carry out the obligations of this Article and to exert its best efforts to enact and implement this legislation by that date.

4. For purposes of this Article:

(a) "right-holder," means the right-holder himself, any other natural or legal persons authorized by him who are exclusive licensees of the right, or other authorized persons, including federations and associations, having legal standing under domestic law to assert such rights; and

(b) "A manner contrary to honest commercial practice" is understood to encompass, inter alia, practices such as theft, bribery, breach of contract, inducement to breach, electronic and other forms of commercial espionage, and includes the acquisition of trade secrets by third parties who knew, or had reasonable grounds to know, that such practices were involved in the acquisition.

ARTICLE X

AREAS FOR FURTHER ECONOMIC AND TECHNICAL COOPERATION

1. For the purpose of further developing bilateral trade and providing for a steady increase in the exchange of products and services, both Parties shall strive to achieve mutually acceptable agreements on taxation and investment issues, including the repatriation of profits and transfer of capital.

2. The Parties shall take appropriate steps to foster economic and technical cooperation on as broad a base as possible in all fields deemed to be in their mutual interest, including with respect to statistics and standards.

3. The Parties, taking into account the growing economic significance of service industries, agree to consult on matters affecting the conduct of service business between the two countries and particular matters of mutual interest relating to individual service sectors with the objective, among others, of attaining maximum possible market access and liberalization.

ARTICLE XI

MARKET DISRUPTION SAFEGUARDS

1. The Parties agree to consult promptly at the request of either Party whenever either actual or prospective imports of products originating in the territory of the other Party cause or threaten to cause or significantly contribute to market disruption. Market disruption exists within a domestic industry whenever imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry.

2. The consultations provided for in paragraph 1 of this Article shall have the objectives of (a) presenting and examining the factors relating to such imports that may be causing or threatening to cause or significantly contributing to market disruption, and (b) finding means of preventing or remedying such market disruptions. Such consultations shall be concluded

within sixty days from the date of the request for such consultation, unless the Parties otherwise agree.

3. Unless a different solution is mutually agreed upon during the consultations, the importing Party may (a) impose quantitative import limitations, tariff measures or any other restrictions or measures it deems appropriate to prevent or remedy threatened or actual market disruption, and (b) take appropriate measures to ensure that imports from the territory of the other Party comply with such quantitative limitations or other restrictions. In this event, the other Party shall be free to deviate from its obligations under this Agreement with respect to substantially equivalent trade.

4. Where in the judgment of the importing Party, emergency action is necessary to prevent or remedy such market disruption, the importing Party may take such action at any time and without prior consultations provided that such consultations shall be requested immediately thereafter.

5. Each Party shall ensure that its domestic procedures for determining market disruption are transparent and afford affected parties an opportunity to submit their views.

6. The Parties acknowledge that the elaboration of the market disruption safeguard provisions in this Article is without prejudice to the right of either Party to apply its laws and regulations applicable to trade in textiles and textile products and its laws and regulations applicable to unfair trade, including antidumping and countervailing duty laws.

ARTICLE XII

DISPUTE SETTLEMENT

1. Nationals, companies and organizations of either Party shall be accorded national treatment with respect to access to all courts and administrative bodies in the territory of the other Party, as plaintiffs, defendants or otherwise. They shall not claim or enjoy immunity from suit or execution of judgment, proceedings for the recognition and enforcement of arbitral awards, or other liability in the territory of the other Party with respect to commercial transactions; they also shall not claim or enjoy immunities from taxation with respect to commercial transactions, except as may be provided in other bilateral agreements.

2. The Parties encourage the adoption of arbitration for the settlement of disputes arising out of commercial transactions concluded between nationals or companies of the United States and nationals or organizations of the Mongolian People's Republic. Such arbitration may be provided for by agreements in contracts between such nationals, companies or organizations, or in separate written agreements between them.

3. The parties may provide for arbitration under any internationally recognized arbitration rules, including the UNCITRAL Rules in which case the parties should designate an Appointing Authority under said rules in a country other than the United States or the Mongolian People's Republic.

4. Unless otherwise agreed between the parties, the parties should specify as the place of arbitration a country other than the United States or the Mongolian People's Republic, that is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 1958.

5. Nothing in this Article shall be construed to prevent, and the Parties shall not prohibit, the parties from agreeing upon any other form of arbitration or dispute settlement which they mutually prefer and agree best suits their particular needs.

6. Each Party shall ensure that an effective means exists within its territory for the recognition and enforcement of arbitral awards.

ARTICLE XIII

NATIONAL SECURITY

The provisions of this Agreement shall not limit the right of either Party to take any action for the protection of its security interests.

ARTICLE XIV

CONSULTATIONS

1. The Parties agree to consult periodically to review the operation of this Agreement.

2. The Parties agree to consult promptly through appropriate channels at the request of either Party to discuss any matter concerning the interpretation or implementation of

this Agreement and other relevant aspects of the relations between the Parties.

ARTICLE XV

DEFINITIONS

As used in this Agreement, the terms set forth below shall have the following meaning:

(a) "company," means any kind of corporation, company, association, sole proprietorship or other organization legally constituted under the laws and regulations of a Party or an political subdivision thereof, whether or not organized for pecuniary gain or privately or governmentally owned; provided that, either Party reserves the right to deny any company the advantages of this Agreement if nationals of any third country control such a company and, in the case of a company of the other Party, that company has no substantial business activities in the territory of the other Party or is controlled by nationals of a third country with which the denying country does not maintain normal economic relations;

(b) "commercial representation," means a representation of a company or organization of a Party;

(c) "national," means a natural person who is a national of a Party under its applicable law; and

(d) "organization," means, with respect to the United States, a company of the United States and, with respect

ARTICLE XVII

ENTRY INTO FORCE, TERM, SUSPENSION AND TERMINATION

1. This Agreement (including its side letters which are an integral part of the Agreement) shall enter into force on the date of exchange of written notices of acceptance by the two governments and shall remain in force as provided in paragraphs 2 and 3 of this Article.

2. (a) The initial term of this Agreement shall be three years, subject to subparagraph (b) and (c) of this paragraph.

(b) If either Party encounters or foresees a problem concerning its domestic legal authority to carry out any of its obligations under this Agreement, such Party shall request immediate consultations with the other Party. Once consultations have been requested, the other Party shall enter into such consultations as soon as possible concerning the circumstances that have arisen with a view to finding a solution to avoid action under subparagraph (c).

(c) If either Party does not have domestic legal authority to carry out is obligations under this Agreement, either Party may suspend the application of this Agreement or, with the agreement of the other Party, any part of this Agreement. In that event, the Parties will, to the fullest extent practicable and consistent with domestic law,

seek to minimize disruption to existing trade relations between the two countries.

3. This Agreement shall be extended for successive terms of three years each unless either Party has given written notice to the other Party of its intent to terminate this Agreement at least 30 days prior to the expiration of the then current term.

DONE at Washington on this twenty-third day of January, 1991, in duplicate, in the English and Mongolian languages. In the event of any conflict between the two texts, the English language text shall control.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE MONGOLIAN PEOPLE'S REPUBLIC:

THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON
20506

January 23, 1991

Dear Mr. Minister:

I have the honor to acknowledge receipt of your letter of today's date concerning benefits under the Generalized System of Preferences ("GSP") which reads as follows:

> During the course of the negotiation of the Agreement on Trade Relations Between the Government of the United States of America and the Government of the Mongolian People's Republic, the delegation of the Government of the Mongolian People's Republic requested that the Government of the United States of America accord benefits to products of the Mongolian People's Republic under the Generalized System of Preferences.
>
> I wish to reiterate this request and ask that your government give it due consideration.

Please be assured that the Government of the United States will give your request due consideration. In this regard, we trust that the explanation provided by the U.S. delegation concerning the eligibility requirements for GSP were useful to your delegation.

Sincerely,

Carla A. Hills

The Honorable Sed-Ochiryn Bayarbaatar
Minister of Trade and Industry
Mongolian People's Republic

THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON
20506

January 23, 1991

Dear Mr. Minister:

In connection with the signing on this date of the Agreement on Trade Relations Between the Government of the United States of America and the Government of the Mongolian People's Republic (the "Agreement"), I have the honor to confirm the understanding reached by our Governments (the "Parties") regarding the establishment of commercial representations in the Mongolian People's Republic as follows:

The Government of the Mongolian People's Republic intends to liberalize the procedure to establish a commercial representation. Pending a formal change in applicable legislation, the Government of the Mongolian People's Republic intends to administer the procedure as a simple registration process.

I have the further honor to propose that this understanding be treated as an integral part of the Agreement on Trade Relations. I would be grateful if you would confirm that this understanding is shared by your Government.

Sincerely,

Carla A. Hills

The Honorable Sed-Ochiryn Bayarbaatar
Minister of Trade and Industry
Mongolian People's Republic

UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for Travel and Tourism
Washington D C 20230

Washington, January 23, 1991

Dear Mr. Minister:

In connection with the signing on this date of the Agreement on Trade Relations Between the Government of the United States of America and the Government of the Mongolian People's Republic (the "Agreement"), I have the honor to confirm the understanding reached by our Governments (the "Parties") regarding cooperation in the field of tourism services as follows:

The Parties recognize the need to encourage and promote the growth of tourism and travel-related investment and trade between the United States of America and the Mongolian People's Republic.

The Parties recognize the benefits to both economies of increased tourism and travel-related investment in and trade between their two territories.

Each Party shall seek permission of the other Party prior to the establishment of official, governmental tourism promotion offices in the other's territory. Permission to open official tourism promotion offices or field offices shall be as agreed upon by the Parties, and subject to the applicable laws, regulations and policies of the host country. Official tourism promotion offices opened by either Party shall be operated on a non-commercial basis. Official tourism promotion offices and the personnel assigned to them shall not function as agents or principals in commercial transactions, enter into contractual agreements on behalf of commercial organizations or engage in other commercial activities. Such offices shall not sell services to the public or otherwise compete with private sector travel agents or tour operators of the host country. Nothing in this side letter shall obligate either Party to open such offices in the territory of the other.

Private and governmentally-owned commercial tourism enterprises shall be treated as private commercial enterprises fully subject to all applicable laws and regulations of the host country.

The Honorable Sed-Ochiryn Bayarbaatar
Minister of Trade and Industry
Mongolian People's Republic

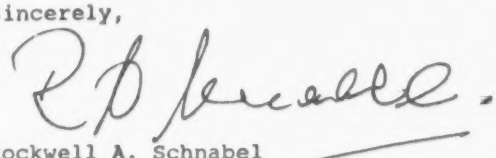
Each Party shall ensure, within the scope of its legal authority, that any company owned, controlled or administered by that Party, or any joint venture therewith, which effectively controls a significant portion of the supply of any tourism or travel-related service in the territory of that Party shall provide those services to nationals and companies of the other Party in a fair and equitable manner and on a most-favored-nation basis.

Nothing in this letter or in the Agreement shall be construed to mean that tourism and travel-related services shall not receive the benefits from that Agreement as fully as all other industries and sectors.

The Parties will consider negotiating a separate agreement on tourism and travel-related services.

I have the further honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government.

Sincerely,



Rockwell A. Schnabel